

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9255 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RATILAL ICHCHARAM SORATHIA

Versus

URBAN LAND CEILING TRIBUNAL

Appearance:

MR KK TRIVEDI for Petitioners

Mr A.G.Uraizee, AGP, for the respondents.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 09/04/96

ORAL JUDGEMENT

The petitioners have questioned the legality and validity of the judgment and order passed by the Urban Land Tribunal, Ahmedabad, in Appeal No.Surat-94/92 on 22.9.93 confirming the order of the Competent Authority dated 30.7.92 by filing this petition under Article 226/227 of the Constitution of India.

2. The petitioners are co-parcener of Hindu

undivided family and are holding the ancestral property bearing Revenue survey No.114 of village Bhatar, sub-district Chorasi, Dist: Surat area admeasuring 9003.60 sq. mtrs. As the Urban Land (Ceiling & Regulation) Act, 1976 (ULC Act) came into force, the petitioners had filed form No.1 under section 6 of the ULC Act. Respondent no.2 Competent Authority passed order and declared 253.60 sq. mtrs of land as excess vacant land. Being aggrieved by the said order, the petitioners filed appeal before the Urban Land Tribunal, Ahmedabad. The said appeal came to be dismissed on 22.9.93. The petitioners, thereafter, applied under section 20 of the ULC Act for marginal land to respondent No.3 State of Gujarat which also came to be rejected on 3.12.94. The petitioners had again applied to respondent No.3 for reconsideration of the order dated 3.12.94 by giving an application on 16.12.94 which also came to be rejected by the respondent No.3 on 13.9.95. Hence this petition.

3. The learned advocate appearing for the petitioners has contended that the Competent Authority has committed serious illegality in not giving unit for daughter Taraben. The Competent Authority has given five units of widow and four sons of deceased Ichcharam who was holding the property which was ancestral one. Therefore, it is contended that the Competent Authority ought to have granted six units instead of five units and the Tribunal has committed serious error in confirming the illegal order of the Competent Authority.

4. The learned Assistant Government Pleader Mr Uraizee has forcefully contended that daughter Taraben had not filed form No.1 and her share was not disclosed by her brothers and therefore, her case cannot be considered and she cannot be given a unit.

5. There is no dispute about the fact that the claim was not made by daughter Taraben by filing form No.1 under section 65 of the ULC Act. But, mere non-filing of form No.1 does not disentitle the person to claim a unit under the ULC Act. It is not incumbent to file form No.1 when land is within limit. It is also an admitted fact that daughter Taraben was not issued notice under Rule 5 of the Urban Land (Ceiling and Regulation) Rules 1976 (for short Rules). When no notice was issued, obviously, she was not expected to raise her claim before the Competent Authority. Simply because her brothers who had filed form No.1 did not disclose the name of the sister, does not create any legal impediment against the sister. When a party is claiming right under Hindu Succession Act

and raising the claim under the Urban Land (Ceiling & Regulation) Act, for separate unit, she cannot be driven back saying that she had not filed form No.1 and that her name was not disclosed by the persons who had filed form No.1. This proposition of law is very well explained and expounded by this Court in the case of Babuben Haribhai v. Competent Authority & Deputy Collector, 1995(2) GCD 239 (Guj.). Since this case is squarely covered by the aforesaid decision, other contentions are not required to be examined. Since the petitioner Taraben who is the daughter of original holder of the land is not issued notice under rule 5 of the Rules, it would be appropriate to remand the matter to the Competent Authority to consider the whole matter afresh after issuing the notice and giving an opportunity of hearing to all the persons interested in accordance with law.

6. In the result, the petition is partly allowed. The impugned orders dated 30.6.92 and 22.9.93 passed by the Competent Authority and the Urban Land Tribunal respectively are hereby quashed and set aside. The matter is remanded to the Competent Authority who in turn is directed to take out the whole exercise and hold a fresh inquiry after issuing notice to petitioner Taraben and after giving an opportunity of hearing to the concerned parties and decide it in accordance with law. Rule is made absolute to the aforesaid extent with no order as to costs.

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